

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 93-0622 CS

Controlled Substance Excise Tax

For The Tax Period: 1993

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ISSUE

Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5, Clifft v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested on October 11, 1992 for the possession of marijuana. The Department issued the taxpayer a Controlled Substance Excise Tax (CSET) assessment on July 20, 1993. Taxpayer filed a protest of the CSET assessment via counsel on August 2, 1993. Taxpayer entered a guilty plea to possession of marijuana on February 11, 1994. The Jackson Circuit Court accepted the plea and ordered sentencing on July 25, 1994. Taxpayer's listed counsel was contacted to schedule a hearing. Taxpayer's counsel asserted that he no longer represents the taxpayer. Taxpayer submitted a written brief in regard to his protest on November 23, 1998. This determination is based on the brief presented.

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer's written brief cites the plea agreement and sentencing from the court that dispose his case. Taxpayer argues that he has already served a debt for his crime and that it is unconstitutional to assess the CSET on him. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea agreement. The Department's assessment occurred on 7/20/93 and the disposition of the taxpayer's criminal case was 7/25/94.

FINDING

The taxpayer's protest is denied.